

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Court Website

The website for the U.S. District Court for the District of Oregon now includes the 1999 issues of the Courthouse News. Please visit our website at ord.uscourts.gov. Another new feature is the "Recent Rulings in Selected Cases," which provides access to a few recent opinions.

Government Claims

Judge Redden denied a motion for summary judgment based on the military contractor defense in consolidated cases involving the crash of an Air Force C-130 military transport plane into the Pacific ocean in November 1996. The actions were brought by the sole survivor of the crash and the estates of six decedents against the manufacturer and seller of the plane, Lockheed Martin; the manufacturer of the engines, Allison Gas Turbine; and the manufacturer of an engine component, Raven Industries, Inc. The defendants asserted that under the military contractor defense articulated by the Supreme Court in Boyle v. United Technologies

Corp., 487 U.S. 500 (1988), they should be immune from liability for alleged defects in the airplane or its engines because the Air Force had approved detailed specifications for the plane and the engines. The court held that the defendants had not established as a matter of law that the Air Force had made discretionary decisions with respect to the design or manufacture of challenged features of the airplane. While the evidence was sufficient to establish the defense, there was other evidence from which a reasonable jury could reject the defense and conclude that discretionary decisions were actually made by the contractors and not by the Air Force. Wellnitz et al. v. Lockheed Martin et al., Civ. No. 97-1648-RE (Lead). (Opinion and Order, August 2, 1999 - 23 pages).

Plaintiff's counsel - Keith Tichenor
Lockheed's counsel - Steven Rosen
Allison's counsel - Philip Rush
Raven's counsel - Richard Fortner

Social Security

Judge Ann Aiken upheld an ALJ's denial of benefits in a claim involving a child diagnosed with ADHD. Plaintiff argued that the ALJ failed to develop the record by not ordering missing reports or an

updated psychological evaluation. Judge Aiken held that these were matters within the ALJ's discretion and that the ALJ's determination was reasonable. The court also rejected the plaintiff's argument that the ALJ was required to complete a psychiatric Review Technique Form. Carmickle v. Apfel, CV 98-1340-AA (Order, July, 1999 - 7 pages).

Plaintiff's Counsel: David Lowry
Defense Counsel:

William Youngman

Employment

Judge Hubel held that an employer is liable under the Violence Against Women Act (42 USC 13981), for the criminal conduct of its employee, upon a showing that (1) the person who committed the gender-motivated crime of violence has final policymaking authority; (2) a final policymaker "ratified" the subordinate's unlawful conduct; or (3) a final policymaker acted with deliberate indifference to the subordinate's unlawful conduct. Judge Hubel also concluded that an action under the Violence Against Women Act is governed by the federal "catchall" four-year statute of limitations (28 USC 1658).

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Grace v. Thomason Nissan, CV 98-177-HU (Findings and Recommendation, July 7, 1999 - 20 pages; Adopted by Order of Judge Panner, Aug. 16, 1999).

Plaintiff's Counsel:

J. William Savage

Defense Counsel: Douglas R. Andres

Bankruptcy

A Chapter 7 bankruptcy trustee filed an appeal following a stipulated facts trial conducted by Judge Perris. The trustee sought to avoid an alleged preferential transfer made by Smith's Home Furnishings to one of its primary secured creditors. Smith's had initially commenced a Chapter 11 reorganization, but were unable to complete the plan and converted to a Chapter 7 liquidation. Within 90 days before declaring bankruptcy, Smith's had paid the defendant creditor over \$12.8 million. To succeed in recapturing these funds, the trustee had to prove that the defendant creditor received more than it would have otherwise received had the payments been made following a Chapter 7 liquidation and that the defendant received more than it would under the bankruptcy code. To make this determination, Judge Perris had to value the defendant creditor's interest. She did so by examining the liquidation value in light of the defendant's floating lien status. Judge Perris ultimately held that the defendant creditor received less than its valued interest and thus,

rejected the trustee's claim of a voidable preference.

The trustee appealed Judge Perris' decision on grounds that the court should have deducted liquidation expenses from the valuation. Judge Robert E. Jones rejected the trustee's arguments and upheld Judge Perris' valuation method and her construction of the "greater amount" test under § 547(b)(5) of the bankruptcy code.

Batlan v. Transamerica

Commercial Finance Corp., CV 99-400-JO (Opinion, August, 1999 - 27 pages).

Plaintiff's Counsel:

Johnston Mitchell

Defense Counsel: Jennifer Palmquist

State Claims

A paralegal training school filed an action against the state of Oregon over a licensing dispute. The plaintiff asserted several tort theories along with federal antitrust and civil rights claims.

Judge Robert E. Jones dismissed all of the state law tort claims on grounds that the individuals named were not proper parties; the State of Oregon was the only proper party under the Oregon Tort Claims Act and the state was immune from an action in federal court under the Eleventh Amendment.

The court also granted summary judgment for the defense on the antitrust claims on grounds that the state had no monopoly power and because plaintiff failed to proffer any evidence that the state acted

with an unlawful, anticompetitive motive.

Plaintiff's § 1983 civil rights claims named all but one of the individual defendants in their official capacities only. The court held that these individuals were arms of the state and since the state is not a "person" under § 1983, no liability attached. As for the single individual named in his personal capacity, the court found that the case could not proceed because all of this individual's challenged actions took place within the confines of this official authority. The court further found no evidence of any violation of the "negative" commerce clause and found no evidence to support a claim of a conspiracy to deprive plaintiff of constitutional rights. Center for Legal Studies, Inc. v. Lindley, CV 99-473-JO (Opinion, August, 1999 - 22 pages).

Plaintiff's Counsel: James Hiller

Defense Counsel: Cynthia Botsios

Insurance

A clothing manufacturer filed an action against its insurer seeking coverage for water damage to clothing held in a warehouse. Plaintiff had an "all-risks policy" and defendant argues that it should not be liable for any indirect damage done to the garments from post-water damage molding. There were two issues before the court on summary judgment: (1) which party should bear the burden of the proof of loss; and (2) what constitutes

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physical damage under the policy?

Judge Dennis J. Hubel rejected plaintiff's argument that the policy language regarding "direct physical loss of or damage to" was ambiguous. Relying upon several Oregon decisions, the court held that the policy language could only have been intended to exclude indirect, nonphysical losses. Thus, to the extent plaintiff sought to recover for items such as the loss in value from a decision not to sell as first quality goods, plaintiffs could not recover. In determining what constituted "direct physical loss," however, the court noted that the standard should be different for a retailer than it might be for a homeowner. Thus, physical damage occurring at the microscopic level might well constitute a direct harm covered under the policy. Columbiaknit, Inc. v. Affiliated FM Ins. Co., CV 98-434-HU (Opinion, Aug. 4, 1999 - 16 pages).

Plaintiff's counsel: David Markowitz

Defense Counsel: John Bennett